INTERIOR BOARD OF INDIAN APPEALS

Joe P. Sievers v. Deputy Assistant Secretary - Indian Affairs (Operations)

13 IBIA 291 (10/11/1985)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

JOE P. SIEVERS
v.
DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 85-43-A Decided October 11, 1985

Appeal from a decision of the Deputy Assistant Secretary--Indian Affairs (Operations) awarding a farming lease on Indian trust land to a third party.

Affirmed.

1. Administrative Procedure: Administrative Review--Appeals--Board of Indian Appeals: Jurisdiction--Bureau of Indian Affairs: Administrative Appeals: Generally

   Upon the expiration of the 30-day time period for decision established by 25 C.F.R. 2.19(b), the Board of Indian Appeals has jurisdiction over an appeal filed with the Deputy Assistant Secretary--Indian Affairs (Operations). However, the Board will not act in the matter unless the appellant invokes the Board's jurisdiction by filing with the Board a separate notice of appeal and a motion to assume jurisdiction, or other document requesting Board jurisdiction. The original filing under 25 CFR 2.11(a) is insufficient to trigger the Board's jurisdiction automatically after the expiration of the time period.

2. Indians: Leases and Permits: Negotiated Leases--Indians: Leases and Permits: Secretarial Approval

   If no approved lease of Indian trust land is outstanding when the heirs or devisees of an Indian decedent are determined, those heirs or devisees have authority to negotiate a lease of the property, notwithstanding prior negotiations by the Superintendent in accordance with 25 CFR 162.2.

APPEARANCES: Gary J. Libey, Esq., Colfax, Washington, for appellant; Theodore F.S. Rasmussen, Esq., Tekoa, Washington, for lessors and Fletcher Farms, Inc. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On August 22, 1985, the Board of Indian Appeals (Board) received a notice of appeal from Joe P. Sievers (appellant). Appellant sought review of

a June 28, 1985, decision of the Deputy Assistant Secretary--Indian Affairs (Operations) finding that the farming lease for Coeur D'Alene Allotment 130-A should be awarded to Fletcher Farms, Inc., rather than to appellant. For the reasons discussed below, the Board affirms that decision.

Background

Coeur D'Alene Allotment 130-A, an 80-acre tract of Indian trust land, was owned solely by Alice Garry Lovine. It was leased for farming to William Shrope on December 4, 1979, with a lease term expiring on December 31, 1984. On November 18, 1982, the lease was assigned to appellant. Alice Lovine died on June 17, 1983.

When the tract came up for re-leasing on January 1, 1984, the Northern Idaho Agency Superintendent, Bureau of Indian Affairs (BIA), (Superintendent) acted in accordance with his authority under 25 CFR 162.2(a)(3) 1/ and began lease negotiations on behalf of the undetermined heirs of the estate. Accordingly, on January 11, 1984, an acceptance of lessor consent form contemplating a 2-year lease was sent to appellant. The letter transmitting the form to appellant stated: "The superintendent has signed for the estate."

BIA acknowledged receipt of appellant's signed consent form on February 29, 1984, and of his cropping plan on March 14, 1984. Apparently BIA did nothing further toward finalizing the leasing of Allotment 130-A until July 13, 1984.

On April 24, 1984, however, an order was entered in the estate of Alice Garry Lovine, finding that in accordance with her will, her estate should be distributed equally to her two daughters, Arlene Lovine Owen and Carol Lovine Crader (lessors). This order became final on June 23, 1984, when no petition for rehearing was timely filed.

On July 13, 1984, BIA again wrote to appellant, sending him copies of two acceptance of lessor forms, one for 2 years, the other for 5 years. The letter stated: "If you want the lease for five years you will have to get the two new landowners to sign for you and mail it right back. If we don't hear from you within two weeks we will assume you want to go with the two year lease, which will be prepared and mailed to you for bonding, etc."

1/ Section 162.2 states the conditions under which BIA may lease Indian trust lands without the consent of the owner:

"(a) The Secretary may grant leases on individually owned land on behalf of: (1) Persons who are non compos mentis; (2) orphaned minors; (3) the undetermined heirs of a decedent's estate; (4) the heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and (5) Indians who have given the Secretary written authority to execute leases on their behalf.

"(b) The Secretary may grant leases on the individually owned land of an adult Indian whose whereabouts is unknown, on such terms as are necessary to protect and preserve such property.

"(c) The Secretary may grant permits on Government land."

Appellant responded to this letter by attempting to gain the lessors' approval of a 5-year lease. On July 30, 1984, BIA received an undated letter from appellant indicating he had sent the consent form to the lessors.

The next evidence in the record is that on November 13, 1984, Shrope, the prior lessee, visited the agency and informed them that the lessors wanted him to find a new lessee. The lessors had apparently lost confidence in appellant because of a lack of response to their attempts to contact him. On November 26, 1984, David Fletcher of Fletcher Farms, Inc. (Fletcher), returned a lessor acceptance form signed by both lessors. Appellant was informed by letter dated November 29, 1984, that BIA had accepted another lease offer.

Appellant filed an appeal from this decision on December 6, 1984. The Portland Area Director denied the appeal on January 8, 1985. The Area Director's decision was subsequently affirmed by appellee on June 28, 1985. That decision states on page 3:

> Although Mr. Sievers did submit various documents in support of his appeal, none definitely established that he did have a formal lease agreement or that he had permission to plant crops and cultivate the land. A potential lessee has no interest in the property until the transaction has been consummated and the lease approved. Furthermore, even though Mr. Sievers did invest a substantial amount of time and expense in farming the land, he never should have assumed that he had a formal lease agreement or that he would have a preference right to future leasing of said land. Title 25 of the Code of Federal Regulations, Part 162.5(3) * * * . When the heirs to Ms. Lovine's estate were determined, the Superintendent no longer had the authority to grant a lease without their consent. For that reason, the new heirs now had the authority to negotiate their own leases as they wished; they did not need the Superintendent to represent them nor were they bound by any previous agreements prior to the determination of their inheritance. Subsequently, both of the new heirs decided on another individual as their choice to farm the property.

Appellant's appeal to the Board was received on August 22, 1985. On September 9, 1985, the Board received a letter from appellant stating that he would not file an additional brief. An answer brief from lessors and Fletcher was received on September 23, 1985. On October 1, 1985, the Board received an oral request from BIA for expedited consideration of this appeal because the fall planting season was far advanced. The administrative record was received on October 8, 1985.

Jurisdiction

[1] Appellant argues that because appellee failed to issue a decision within 30 days from the date his appeal was ripe for decision, in violation of 25 CFR 2.19(a)(1), the decision eventually issued should be declared void. The Board has previously fully addressed this argument. In Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 146 153 (1983), the Board discussed the status of an appeal

after the expiration of the 30-day time period established in 25 CFR 2.19. It declined to hold that a decision issued by the Deputy Assistant Secretary after that time was void:

> Under 25 CFR 2.11(a) a notice of appeal filed with the [Deputy Assistant Secretary] must also be served on the Board. Service on the Board of subsequent documents is not required. Therefore, the Board does not have independent knowledge that the 30-day limitation established in section 2.19 has expired. When an appellant informs the Board of the expiration of this period through the filing either of a notice of appeal giving evidence of the expiration or of a motion for the Board to assume jurisdiction over the appeal, the Board will act to ensure that the time limitation is properly observed by docketing the case and requesting transmittal of the administrative record from the office of the Deputy Assistant Secretary.
>
> If, however, as here, an appellant acquiesces in the failure of the Deputy Assistant Secretary either to decide the case or refer it to the Board within the time limitation, the Board declines to hold that any decision eventually issued is void. If a decision of the Deputy Assistant Secretary that is rendered past the time limits imposed by 25 CFR 2.19 is subsequently appealed to the Board, it will be reviewed under the same standards as would apply for review of any other decision.

See also Wray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 146 (1984).

Discussion and Conclusions

The issue before the Board is whether appellee properly held that appellant did not have a lease to farm Allotment 130-A on or before June 23, 1984. The Superintendent had authority to lease the allotment only as long as the heirs were undetermined. See 25 CFR 162.2(a)(3). If there were no valid lease outstanding 2/ once the probate order was final on June 23, 1984, lessors had the right to negotiate their own lease under 25 CFR 162.3 3/ and 162.6(a). 4/

2/ The Board notes that appellee stated in his June 28, 1985, decision that lessors were not "bound by any previous agreements prior to the determination of their inheritance." Because this issue is not specifically raised in this decision, the Board does not decide whether or not this statement is legally correct. It notes, however, that the statement is very broad and suggests that a person inheriting trust property would not be bound by an outstanding executed lease agreement. Such a conclusion would be contrary to generally accepted doctrines of property and contract law.

3/ Section 162.3 states in pertinent part: "The following may grant leases: (l) Adults, other than those non compos mentis * * *."

4/ Section 162.6(a) states: "Leases of individually owned land or tribal land may be negotiated by those owners or their representatives who may execute leases pursuant to § 162.3."

The record indicates that as of March 1984, both appellant and BIA expected that appellant would receive the lease on Allotment 130-A. For some reason not disclosed in the record, BIA did not complete the processing of the lease. Consequently, no lease was approved prior to the determination of the heirs to the allotment. It further appears that lessors originally attempted to negotiate a new lease with appellant and did not decide until October or November 1984 to seek a new lessee because of a perceived lack of cooperation by appellant.

[2] The Board will not speculate as to the reasons for BIA's failure to complete the processing of appellant's lease application in the spring and early summer of 1984. This failure apparently served to disadvantage the parties. However, once lessors were determined to be the owners of the allotment and no approved lease was in force, they had the right to negotiate a lease for the property. Simultaneously, the Superintendent lost the authority to approve a lease without the heirs' consent. 25 CFR Part 162. Finally, even assuming arguendo that BIA's July 13, 1984, letter to appellant contained a valid offer to enter into a 2-year lease, appellant elected instead to negotiate with the new owners for a 5-year term. Such an effort is tantamount to a rejection of the 2-year term.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 28, 1985, decision of the Deputy Assistant Secretary--Indian Affairs (Operations) is affirmed.

//original signed
Bernard V. Parrette
Chief Administrative Judge

I concur:

//original signed
Jerry Muskrat
Administrative Judge